

## HOUSE BILL NO. 299

INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING RECLAMATION FOR OPENCUT MINING; REVISING THE BONDING REQUIREMENTS FOR OPENCUT MINING PERMITS; PROVIDING A MANDAMUS ACTION TO REQUIRE COMPLIANCE WITH OPENCUT MINING RECLAMATION LAWS; AMENDING SECTION 82-4-433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 82-4-433, MCA, is amended to read:

**"82-4-433. Bond.** (1) A bond required to be filed under this part by the operator must be in a form that the department prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, the rules of the board, and the permit. The bond must be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The bond must be in an amount not to exceed the costs of restoration required by this part as determined by the department. The amount of the bond may not be less than \$200 or more than \$1,000 an acre unless the department determines, in writing, that the cost of restoration of the land exceeds \$1,000 an acre. Upon the cost determination, the bond amount must be set by the department at the cost of restoring the land. The bond may not be less than the estimated cost to the state to ensure compliance with this part, rules adopted pursuant to this part, and the permit, including the potential cost to the department or a third party to assess, plan, oversee, construct, and monitor reclamation at the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be accomplished.

(2) In lieu of the bond, the operator may deposit with the department cash, government securities, ~~or a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for~~

1 ~~foreclosure costs.~~

2       (3) The penalty of the bond or amount of cash and securities must be increased or reduced from  
3 time to time as provided in this part. The bond or security remains in effect until the affected land has been  
4 reclaimed as provided under the permit and the reclamation has been approved and the bond or security  
5 has been released by the department. The bond or security may cover only actual affected land and may  
6 be increased or reduced to cover only those acreages as remain unreclaimed.

7       (4) If the department determines that the set bonding level of a permit does not represent the  
8 present costs of compliance with this part, the rules adopted pursuant to this part, and the permit, the  
9 department shall notify the permittee in writing of its determination. The department shall recalculate the  
10 bond for the permit within 30 days of making the notification. The permittee shall have an additional 30  
11 days following the department's recalculation of the bond amount to post the increased bond with the  
12 department. Upon failure to post bond in the amount of the final bond determination as provided in this  
13 section, the department shall suspend the permit. The permittee or any person with an interest that may  
14 be adversely affected may obtain a contested case hearing under the provisions of the Montana  
15 Administrative Procedure Act on the final bond determination by filing a written request with the  
16 department within 30 days of the issuance of the final bond determination. As a condition precedent to  
17 any right to request a hearing, the permittee shall post bond with the department in the amount of the final  
18 bond determination. Upon failure to post bond in the amount of the final bond determination as provided  
19 in this section, the department shall suspend the permit.

20       ~~(3)~~(5) If the license of a surety upon a bond filed with the department pursuant to this part is  
21 suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation  
22 from the department, shall substitute for that surety a good and sufficient surety licensed to do business  
23 in the state. Upon failure of the operator to make substitution of surety, the department ~~may~~ shall suspend  
24 the permit of the operator to conduct operations upon the land described in the permit until the substitution  
25 has been made.

26       ~~(4)~~(6) The department shall cause the reclamation of any affected land with respect to which a  
27 bond has been forfeited.

28       ~~(5)~~(7) Whenever an operator has completed all of the requirements under the provisions of this  
29 part as to any affected land, the operator shall notify the department of the completed requirements. If  
30 the board releases the operator from further obligation regarding any affected land, the penalty of the bond

1 must be reduced proportionately."

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3 **NEW SECTION.** **Section 2. Mandamus to compel enforcement.** (1) A person having an interest  
4 that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted  
5 under this part is not being enforced by a public officer or employee whose duty it is to enforce the  
6 requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by  
7 an affidavit stating the specific facts of the failure to enforce the requirement or rule. Knowingly making  
8 false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing,  
9 as provided in 45-7-202.

10 (2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of  
11 the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district  
12 court of the first judicial district or in the district court of the county in which the subject land or operation  
13 is located. If the court finds that a requirement of this part or a rule adopted under this part is not being  
14 enforced, it shall order the public officer or employee to perform the duties. If the officer or employee fails  
15 to do so, the public officer or employee must be held in contempt of court and is subject to the penalties  
16 provided by law.

17 (3) A person having an interest that is or may be adversely affected may commence a civil action  
18 to compel compliance with this part against a person for the violation of this part or any rule, order, or  
19 permit issued under it. However, an action may not be commenced:

20 (a) prior to 60 days after the plaintiff has given notice in writing to the department and to the  
21 alleged violator; or

22 (b) if the department has commenced and is diligently prosecuting a civil action to require  
23 compliance with the provision of this part or any rule, order, or permit issued under it. A person having  
24 an interest that is or may be adversely affected may intervene as a matter of right in the civil action.

25 (4) Legal activities under subsection (3)(a) must be brought in the district court of the county in  
26 which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other  
27 judicial district.

28 (5) Nothing in this section restricts a person's right under any statute or common law to seek  
29 enforcement of this part or the rules adopted pursuant to this part or to seek any other relief.

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1        NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an  
2    integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to  
3    [section 2].

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5 NEW SECTION. **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are  
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
7 applications, the part remains in effect in all valid applications that are severable from the invalid  
8 applications.

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10 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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